

Message Text

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C O N F I D E N T I A L KINSHASA 2662

DEPT PASS EXIMBANK, TREASURY

E.O. 11652: GDS 12/31/83
TAGS: EFIN, DB, US
SUBJECT: EXIMBANK IMPLEMENTING AGREEMENT FOR PARIS CLUB
RESCHEDULING

REF: A) KINSHASA 2596 B) KINSHASA 2450

1. ONCE FRENCH TRANSLATIONS OF EXIM IMPLEMENTING AGREEMENT ARE RECEIVED, WE WILL WANT TO BE PREPARED TO ANSWER QUESTIONS GOZ MIGHT RAISE ABOUT AGREEMENT. AFTER QUICK READING OF IMPLEMENTING AGREEMENT, WE WOULD LIKE TO CLARIFY OUR UNDERSTANDING OF A FEW POINTS WE ANTICIPATE GOZ MIGHT RAISE.

2. FIRST, WE WISH TO NOTE THAT WE HAVE NOT YET RECEIVED ANY OF THE ATTACHMENTS TO THE AGREEMENT. WE EXPECT THAT GOZ WILL BE VERY INTERESTED IN EXAMINING THE LIST OF DIRECT CREDITS AND EXPORTER CREDITS AND THE PROMISSORY NOTES COVERED BY THE AGREEMENT. WE DOUBT THAT IT WILL BE USEFUL TO SUBMIT THE AGREEMENT TO GOZ WITHOUT THESE ATTACHMENTS.

3. WE NOTE THAT THE EXIM IMPLEMENTING AGREEMENT IS TO BE SIGNED IN ENGLISH. DOES THIS REPRESENT A PATTERN THAT WILL BE FOLLOWED IN SIGNATURE OF GENERAL BILATERAL AND THE SPECIFIC IMPLEMENTING AGREEMENTS WITH DOD, CCC AND AID? IS SO, IT WILL BE CONFIDENTIAL

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NECESSARY TO PROVIDE GOZ WITH FRENCH TRANSLATIONS IN EACH CASE. WE SHOULD BE AWARE THAT REQUIREMENTS THAT GOZ PROVIDE ENGLISH TRANSLATIONS FOR ALL NOTICES, COMMUNICATIONS, REPORTS, OPINIONS AND OTHER DOCUMENTS (PER ARTICLE VIII, D) COULD OVERTAX LIMITED GOZ TRANSLATION CAPABILITIES.

4. WE RESPECT THAT ZAIRIANS WILL WISH TO KNOW RATIONALE FOR

ARTICLE VIII, F, WHICH STATES THAT GOZ "SHALL REIMBURSE EXIMBANK ON DEMAND, FOR ALL OUT-OF-POCKET EXPENSES (INCLUDING LEGAL FEES) INCURRED BY EXIMBANK IN CONNECTION WITH THE PREPARATION ESTABLISHMENT, OPERATION AND ENFORCEMENT OF THIS AGREEMENT OR NOTES". WILL THIS BE A STANDARD CLAUSE IN ALL IMPLEMENTING AGREEMENTS? HOW IS THIS TO BE INTERPRETED? CLAUSE SEEMS PARTICULARLY STRANGE IN VIEW OF APPARENT LIMITATIONS ON GOZ RIGHTS TO INCUR OUTSIDE EXPENDITURES IN PREPARATION OR IMPLEMENTATION OF AGREEMENT. SEE PARA 9 FOLLOWING.

5. WE NOTE THAT THE EXIM AGREEMENT USES IN ITS FIRST SENTENCE THE DESIGNATION "REPUBLIC OF ZAIRE (GOVERNMENT)" AND THEN USES THE TERM GOVERNMENT THROUGHOUT THE REST OF TEXT. SINCE ZAIRIANS HAVE EXPRESSED THEMSELVES ON THIS POINT (REF B), PERHAPS USG COULD FORMULATE A COMMON APPROACH THAT WOULD BE USED BOTH IN THE GENERAL BILATERAL AND IN EACH OF INDIVIDUAL IMPLEMENTING AGREEMENTS.

6. A SIMILAR COORDINATION MAY BE APPROPRIATE ON THE ISSUE OF PROVISION OF COPIES OF OTHER DRAFT BILATERALS. OUR DRAFT BILATERAL SPOKE OF COPIES OF EACH CONSOLIDATION AGREEMENT BEING PROVIDED TO USG. WILL EACH INDIVIDUAL AGENCY ASK THAT COPIES OF OTHER AGREEMENTS BE PROVIDED THEM DIRECTLY? IN THIS REGARD, WE SHOULD BEAR IN MIND GOZ PREFERENCE THAT WE OBTAIN COPIES OF THESE AGREEMENTS DIRECTLY FROM OUR PARIS CLUB PARTNERS.

7. WE WOULD APPRECIATE A LITTLE BACKGROUND ON QUESTION OF "EXPORTER RETENTIONS" OR "LENDER RETENTIONS". WE ASSUME THAT THIS REFERS TO UNGUARANTEED OR UNINSURED PORTIONS OF CREDITS WHICH ARE LARGELY GUARANTEED OR INSURED BY EXIM(E.G. FICA COVER-CONFIDENTIAL

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AGE WHERE EXIM INSURES 90 PER CENT WHILE EXPORTER BEARS RISK FOR REMAINING 10 PER CENT). WILL A LIST OF THESE AMOUNTS BE PROVIDED ON ATTACHMENTS A AND B? DOES GOZ NEED ANY KIND OF ASSURANCE THAT OWNERS OF LENDER RETENTIONS CONSENT TO HAVE PAYMENT FUNNELED THROUGH EXIM? IF THESE LENDERS' RETENTIONS ARE NOT OWED TO, GUARANTEED BY, OR INSURED BY EXIM, MAY THEY BE INCLUDED WITHIN FRAME OF REFERENCE OF PARIS AGREEMENT AND THE GENERAL BILATERAL AGREEMENT? FINALLY, WE NOTE THAT WHILE DEFINITIONS IN ARTICLE I SPEAK OF "EXPORTER RETENTIONS". THIS PHRASE DOES NOT REAPPEAR IN REST OF TEXT. RATHER, WE HAVE IN ARTICLE VII THE PHRASE "LENDER RETENTION" WHICH IS NOT DEFINED. ARE THE TERMS INTERCHANGEABLE OR IS THERE SUBSTANTIAL DIFFERENCE BETWEEN TWO PHRASES THAT WE SHOULD BE PREPARED TO EXPLAIN?

8. ON THE OTHER HAND, WE NOTE THAT THIS AGREEMENT INCLUDES AS REFUNDABLE MATURITIES DIRECT CREDITS TO "PRIVATE BORROWERS IN ZAIRE AS TO WHICH THE LOCAL CURRENCY REQUIRED TO COVER INSTALLMENTS OR PRINCIPAL AND INTEREST FALLING DUE DURING THE REFUND-

ING PERIOD HAVE BEEN DEPOSITED WITH THE BANQUE DU ZAIRE". THE SAME APPLIES TO EXPORTER CREDITS WHEN THEY HAVE A REPAYMENT TERM OF OVER ONE YEAR AND WHEN THEY HAVE BEEN GUARANTEED BY FCIA. WE ASSUME THIS TIES IN WITH ARTICLE VI UNDER WHICH EXIM ASSIGNS TO GOZ ANY INTEREST OR CLAIM WHICH EXIM MAY HAVE WITH RESPECT TO LOCAL CURRENCY DEPOSITS WHICH THE OBLIGORS... MAY HAVE MADE WITH THE BANQUE DU ZAIRE. SUPPOSE GOZ DOES NOT WISH TO BE ASSIGNED EXIM'S RIGHTS TO LOCAL CURRENCY DEPOSITS BY PRIVATE ZAIRIAN ENTITIES. BY WHAT RATIONALE COULD THESE OBLIGATIONS THEN BE INCLUDED IN A GOVERNMENT-TO-GOVERNMENT REFUNDING AGREEMENT?

9. FINALLY, WE WOULD APPRECIATE EXPLANATION OF ARTICLE III, 3, IN WHICH GOZ "REPRESENTS, WARRANTS AND COVENANTS..." "THAT IT HAS NOT PAID, AGREED TO PAY OR CAUSED TO BE PAID, AND COVENANTS THAT IT WILL NOT PAY AGREE TO PAY OR CAUSE TO BE PAID TO ANY PERSON OR ENTITY (EXCEPT THE GOVERNMENT'S REGULAR FULL-TIME OFFICIALS AND EMPLOYEES TO THE EXTENT OF THEIR REGULAR

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RENUMERATION (SIC), ANY COMMISSION, FEE OR OTHER PAYMENT IN CONNECTION WITH THE ESTABLISHMENT OR OPERATION OF THIS REFUNDING." IS THIS TO IMPLY THAT GOZ DOES NOT HAVE RIGHT TO SEEK OUTSIDE LEGAL COUNSEL IN ESTABLISHING OR IMPLEMENTING AN AGREEMENT WHICH, ACCORDING TO ARTICLE VIII.), IS TO BE "GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE DISTRICT OF COLUMBIA, UNITED STATES OF AMERICA."

10. IT IS, OF COURSE, POSSIBLE THAT GOZ WILL NOT RAISE ANY OF POINTS DISCUSSED ABOVE. NEVERTHELESS, WE WOULD LIKE TO BE EQUIPPED WITH READY ANSWERS IN CASE THEY DO.

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